

SBCivil Writ Petition No.1472/1996

(Smt.Mahendra Kumari v. State & Ors.)

Date of Order :: 25th January, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.S.Chouhan, for the respondents.

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On filing a return by the petitioner under Section 6-A of the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as "the Act of 1976") the authorised officer by an order dated 19.3.1982 directed for acquisition of 80,975 sq.mtrs. of land. The authorised officer by notification dated 2.3.1983 invited objections with regard to proposed acquisition of land as prescribed under Section 10-A of the Act of 1976. No objections in pursuant thereto were filed and final order was published in official gazette on 5.9.1985. According to the averments contained in writ petition the respondents No.4 to 13 after publication of final order preferred an appeal before the Divisional Commissioner, Jodhpur which came to be disposed of by an order dated 21.4.1992. In the said appeal the petitioner was not impleaded as a party, therefore, an application under Section 151 CPC was preferred on behalf of the petitioner to recall the order dated 21.4.1992. In the application the petitioner contended that the respondents No.4 to 13

were having no interest and, therefore, they were not competent to file the appeal. The application preferred by the petitioner was rejected by the Divisional Commissioner by an order dated 20.9.1993 being not competent. Aggrieved by the same the instant petition for writ is filed by the petitioner with the prayer to quash the order dated 21.4.1992 passed in appeal and the order dated 20.9.1993 passed by the Divisional Commissioner, Jodhpur rejecting the application preferred under Section 151 CPC.

At the outset counsel for the petitioner has stated that in view of the fact that the Act of 1976 has already been repealed, therefore, no cause now survives to pursue the instant writ petition, as such the writ petition has become infructuous.

Shri B.S.Chouhan, counsel appearing on behalf of respondents No.4 to 8 and 10 to 12 does not dispute this position, however, he has stated that the petitioner is required to be saddled with exemplary cost as the present writ petition is also filed against Smt.Narayani Devi, respondent No.9, and Shri Sangram Singh, respondent No.13, who died even prior to disposal of appeal by Divisional Commissioner, Jodhpur under the order dated 21.4.1992. Shri Chouhan has placed reliance upon a judgment of this Court in the case of Manphool v. Manphool, reported in 1983 RLW 153, wherein a direction was given for prosecution of

the petitioner as the affidavit filed in support of contents of the writ petition was found false.

It is true that respondent No.9 Smt.Narayani Devi and respondent No.13 Shri Sangram Singh died even prior to disposal of the appeal and they were represented in appeal by their legal representatives, however, present one is not a case where the petitioner can be subjected for cost as I do not find any malice or mischief on part of the petitioner in impleading dead persons. It appears that Smt.Narayani Devi and Shri Sangram Singh were erroneously impleaded as party respondents. In the case of Manphool v. Manphool (supra) the Court directed for prosecution of the petitioner on being satisfied that non-petitioner gave false evidence before the Court by swearing in a false affidavit in support of the writ petition and that the non-petitioner committed an offence punishable under Section 193 IPC with a view to misled the Court and to obtain a favourable order by making a false statement.

As stated above, in the present case I do not find any malice or mischief on part of the petitioner in impleading dead persons as party respondents, therefore, no order for prosecuting the petitioner or for imposing cost upon the petitioner is required to be passed.

The writ petition, therefore, is dismissed as having become infructuous.

(GOVIND MATHUR),J.

kkm/ps.